

ANALYSIS OF ORIGINAL BILL

Author: Poochigian Analyst: Marion Mann DeJong Bill Number: AB 2250

Related Bills: See Legislative History Telephone: (916) 845-6979 Introduced Date: 02/19/98

Attorney: Doug Bramhall Sponsor:

SUBJECT: Reimbursement Claims For Fees & Expenses Related To BOE Appeal/BOE Grant Hearing

SUMMARY

This bill would provide an oral hearing before the Board of Equalization (BOE) for taxpayers who file a claim for reimbursement of fees and expenses incurred during a hearing before the BOE. This bill also would include fees and expenses incurred at the oral hearing in the amount that may be reimbursed. This analysis will discuss only appeals relating to actions of the Franchise Tax Board (FTB).

EFFECTIVE DATE

This bill would become effective January 1, 1999.

LEGISLATIVE HISTORY

AB 713 (Stats. 1997, Ch 600), AB 1488 (1997/98).

SPECIFIC FINDINGS

Under current federal law, taxpayers petition the tax court to protest an adverse IRS action with respect to deficiency assessments. Taxpayers may be entitled to reimbursement of expenses for representation before the tax court. To be entitled to reimbursement, the taxpayer must have exhausted all administrative remedies and prevailed in court. Only expenses incurred after the earlier of the date of (1) the taxpayer's receipt of the decision of the Internal Revenue Service (IRS) office of appeals or (2) the date of the notice of deficiency can be reimbursed.

Under current state law, taxpayers may appeal adverse FTB actions on protests of deficiency assessments and claims for refund to the BOE. In the event of an adverse determination by the BOE, the taxpayer, after paying the amount due, may bring an action for refund against FTB in Superior Court.

Under current state law, taxpayers may be reimbursed for expenses (i.e., costs, fees or other expenses) to be represented before the BOE or in court. However,

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
___ X ___ PENDING

Agency Secretary Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
DEFER TO _____

GOVERNOR'S OFFICE USE

Position Approved ___
Position Disapproved ___
Position Noted ___

Department Director Date
Gerald H. Goldberg 3/12/98

Agency Secretary Date

By: Date

to be entitled to appeal expenses, the taxpayer must exhaust all administrative remedies and prevail before the BOE or in court. For both litigation and BOE hearing expenses, FTB must establish that it was substantially justified in its position. FTB's position is presumed not to be substantially justified if the FTB did not follow its applicable published guidance (e.g. regulation, legal ruling, notice, information release, announcement, or any chief counsel ruling or determination letter). For cases before the BOE, the reimbursement is limited to the fees and expenses incurred after the date of filing an appeal of a notice of action with respect to a deficiency assessment or jeopardy assessment, or denials of claims for refunds. The law does not specifically provide for reimbursement of fees and expenses incurred in the fee dispute proceeding (i.e., filing the reimbursement claim, hearing by the BOE on that claim). However, several federal court cases, including a United States Supreme Court case¹, have determined that a taxpayer can seek reimbursement for fees and expenses incurred in the fee dispute proceeding itself.

Under current practice, BOE has jurisdiction to reimburse taxpayer fees and expenses through a hearing after both parties file statements. The hearing may be based solely on each party's written statement rather than an oral hearing, at the BOE's discretion. Reimbursement is not limited to those cases the BOE actually hears/decides. If both the taxpayer and FTB submit written statements to the BOE during the appeal process and FTB subsequently withdraws its action before the BOE actually hears/decides the case based on the written statements (written hearing), the BOE has jurisdiction to award reimbursement. If, however, the FTB withdraws its action prior to submitting its statement to the BOE, reimbursement by the BOE would be precluded.

This bill would provide an oral hearing before the BOE for taxpayers who file a claim for reimbursement of fees and expenses incurred during a hearing before the BOE, unless the taxpayer waives the oral hearing in writing. The BOE would provide the taxpayer 30 days' notice of the time and place of the hearing and could continue the hearing if necessary.

This bill would also include fees and expenses incurred at the oral hearing in the amount that may be reimbursed.

Policy Considerations

This bill would provide that taxpayers are allowed an oral hearing on fee or expense reimbursement claims, unless the taxpayer waives that right. The BOE would provide the taxpayer 30 days' notice of the hearing. BOE Regulation 5076.1, which applies to appeal hearings, provides that the appeal is submitted for decision on the basis of written record unless the taxpayer requests an oral hearing. The BOE provides the taxpayer 60 days' notice of the hearing. Thus, this bill would make the procedures for fee or expense reimbursement claim hearings different from procedures for appeal hearings.

¹ Commissioner, INS v. Jean (1990) 496 US 154, 110 S.Ct. 2316, 110 L.Ed. 2d 134; Powell v. Commissioner (1990) 891 F.2d 1167, applicable to Internal Revenue Code Section 7430 claims for taxpayer reimbursement for fees and expenses.

Implementation Considerations

Implementation of the provision of this bill would occur during the department's normal annual system update.

FISCAL IMPACT

Departmental Costs

The departmental costs associated with this provision are unknown. Recently, fee claims under current law have increased, and this provision would include fees and expenses from the oral hearing in the costs that the taxpayer may recover. Since this bill is not funded, the department would be required to redirect costs from another area of its budget.

Tax Revenue Estimate

This provision has no impact on tax liability under the PITL or B&CTL.

BOARD POSITION

Pending.